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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the human rights situation in the Republic of Equatorial Guinea submitted by the Special Representative of the Commission, Mr. Gustavo Gallón, pursuant to Commission on Human Rights resolution 2001/22

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CONTENTS

	Paragraphs	Page
Executive summary and introduction		4
I. MONITORING OF THE HUMAN RIGHTS SITUATION	1 - 92	7
I.1 CIVIL AND POLITICAL RIGHTS	1 - 61	7
A. Right to physical freedom and integrity of the person	1 - 23	7
B. Right to due process (and independence of the judiciary)	24 - 31	12
C. Right to vote and to be elected	32 - 38	14
D. Freedom of movement	39 - 43	17
E. Rights to equality and self-determination (racial discrimination)	44 - 48	18
F. Right of association (and protection of human rights defenders)	49 - 52	18
G. Freedom of the press and right to information	53 - 61	19
I.2 ECONOMIC, SOCIAL AND CULTURAL RIGHTS	62 - 92	21
A. General economic situation	62 - 64	21
B. Right to health	65 - 69	21
C. Right to work	70 - 75	22
D. Rights of girls and boys	76 - 81	23
E. Right to education	82 - 86	24
F. Status of women	87 - 92	25

CONTENTS (continued)

		Paragraphs	Page
II.	MONITORING OF TECHNICAL ASSISTANCE TO EQUATORIAL GUINEA IN THE FIELD OF HUMAN RIGHTS	93 - 103	26
	A. Technical assistance by the European Commission	93 - 95	26
	B. Technical assistance by the United Nations Development Programme	96	27
	C. Technical assistance by the Government of Spain	97 - 100	27
	D. Technical assistance by the Government of France	101 - 103	28
III.	ASSISTANCE TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND TO THE GOVERNMENT FOR THE ESTABLISHMENT OF A TECHNICAL ASSISTANCE PROGRAMME BY THE OFFICE OF THE HIGH COMMISSIONER	104 - 109	28
IV.	CONCLUSIONS AND RECOMMENDATIONS	110 - 118	30

Executive summary and introduction

The human rights situation in Equatorial Guinea has been a matter of concern to the Commission on Human Rights for longer than that of any other country. Consideration began in 1976 under the confidential procedure and, since 1979, has been conducted in public proceedings, in accordance with which Mr. Fernando Volio Jiménez (Costa Rica) was appointed Special Rapporteur the same year. His mandate was renewed each year until 1993, with the title of Independent Expert. He was succeeded as Special Rapporteur in 1993 by Mr. Alejandro Artucio (Uruguay), whose mandate was also renewed each year until 1999, when Mr. Gustavo Gallón (Colombia) was appointed Special Representative with a dual mandate to monitor both the human rights situation and the technical assistance provided to Equatorial Guinea. This mandate was renewed in 2000 and extended in 2001.

In his two preceding reports, the Special Representative noted, as had his two distinguished predecessors over a period of 20 years, that the grave human rights situation had been continuing for over three decades and even dated back to the colonial era, before the country obtained independence from Spain in 1968. The problem can be summarized as the absence of any genuine rule of law under what is actually a single-party regime (although in formal terms multiparty politics is permitted) functioning with the support of a military whose powers are no different from those of the police and which even exercises jurisdiction over civilians. Following the overthrow of Francisco Macías' dictatorship in 1979 by his nephew, then a lieutenant-colonel and Minister of Defence and now President, Teodoro Obiang Nguema, the Government proclaimed itself democratically based and accordingly established a number of democratic institutions; however, the population lacks any legal safeguards and any person can be deprived of his liberty at any moment and has no effective remedy to impede, rectify or repair that situation. More than 65 per cent of the population lives in extreme poverty, a situation that is not improving despite the discovery and exploitation of significant oil deposits since 1995; indeed, that fact may be helping to exacerbate social differences.

The Special Representative submits herewith his third report to the Commission. It has been prepared on the basis of information gathered during his visit to Equatorial Guinea between 4 and 18 November 2001, in pursuance of Commission resolution 2001/22, which renewed his dual mandate to examine the human rights situation and monitor the technical assistance provided to Equatorial Guinea in order to verify that it supports its national plan of action on human rights; and which added a third component to that mandate, namely, to assist the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the Government of Equatorial Guinea, by holding a dialogue with the Government, in establishing a programme of technical assistance in the field of human rights.

With regard to the first component of this mandate, the Special Representative found during his visit that the Government has taken steps to begin implementing directly, and without the need for external technical assistance, some of the recommendations made by the Commission over the last 23 years, such as improving the sanitary conditions and physical premises of some detention centres, making arrangements for legislation to be published in an official gazette and deciding not to prosecute persons in possession of foreign newspapers. During the visit, the Government also informed the Special Representative of its decision to accede by March 2002 to the Convention against Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, in compliance with recommendations made repeatedly by the Commission; and of its willingness to take the necessary steps, again by March 2002, to strengthen the mechanisms enforcing the prohibition on arbitrary detentions and preventing women or their family members from being deprived of their liberty for not returning a dowry in the event of divorce, and to submit to Congress a bill to ensure that civilians are not tried by military courts. If these steps are taken and these undertakings fulfilled, they could significantly help to improve the grave human rights situation that persists in Equatorial Guinea, as could be seen during the visit and as described in this report.

With regard to the second component of his mandate, the Special Representative noted that several technical assistance projects have been agreed with Equatorial Guinea and that some of these are already being implemented by such States as Spain and France or by private companies from the United States and Spain, while others are shortly to be launched by organizations such as the United Nations Development Programme (UNDP) and the European Commission. Projects of this kind tend - some more consistently than others - to create conditions conducive to the development of a national plan of action on human rights based on some of the Commission's repeated recommendations, but in all cases their basic principles need strengthening if those efforts are to be fruitful.

With regard to the third component of his mandate, after discussions with the Government during his visit, the Special Representative recommended to OHCHR in November 2001 that a team of experts on the Convention against Torture, on judicial investigation techniques that do not involve torture and on military systems of criminal justice should be sent on a mission to support and help the Government in its undertakings to implement the recommendations made in this regard. Depending on the outcome of the mission, which it is hoped to carry out in early 2002, and the Government's willingness to implement other recommendations of the Commission, further specific projects could be organized that would pave the way for the preparation, adoption and implementation of a national plan of action on human rights.

In concluding the task entrusted to him by the Commission, the Special Representative recommends that the situation of human rights in Equatorial Guinea and any technical assistance provided should continue to be monitored in order to ensure the implementation of the recommendations repeatedly made by the Commission over the last 20 years and the reinforcement of the measures and undertakings the Government has embarked on in pursuit of that goal.

During his visits to the capital, Malabo (from 4 to 13 and 15 to 18 November), Bata (13 to 15 November) and Evinayong (14 November), the Special Representative had two meetings with the Inter-Ministerial Commission on Human Rights, a body established by the Government in 2001 to deal specifically with human rights, and also held bilateral meetings with many government representatives, with all of whom he had wide-ranging, cordial and frank discussions: the President, 10 ministers, the President of the House of Representatives of the People, who is also President of the National Human Rights Commission, and the Government Representative in Evinayong.

He also met with opposition political parties - both those that are members of the government coalition and the only legally recognized party that is not part of the coalition - and with representatives of political groupings that are not legally recognized as parties. He also interviewed individual members of civil society and detained persons.

The Special Representative also had the opportunity to meet diplomatic representatives, including the ambassadors of Cameroon, France, Nigeria and Spain, the representative of the European Commission and representatives of United Nations agencies such as the World Health Organization (WHO) and the United Nations Children's Fund (UNICEF).

The Special Representative wishes to thank the national authorities for their support throughout his visit and their willingness to enter into dialogue, which made it possible for him to carry out his mission in accordance with the Commission's requirements. Their attitude contrasted with the marked lack of cooperation the Special Representative met from certain local authorities, especially the police station and gendarmerie in Bata.

The Special Representative was in constant contact with the Resident Representative ad interim of UNDP, Mr. Bacar Abdouroihamane, and his colleagues, to whom he extends his deepest gratitude for their firm support, which was vital to the success of the mission. He also wishes to thank the members of the delegation accompanying him, Ms. Benedetta Odorisio, a member of the staff of OHCHR, and Mr. John Bevan, a UNDP consultant, for their valuable work and diligence.

I. MONITORING OF THE HUMAN RIGHTS SITUATION

I.1. CIVIL AND POLITICAL RIGHTS

A. Right to physical freedom and integrity of the person

1. The Special Rapporteur has stated in his preceding reports that "the clearest evidence of the gravity of the human rights situation in Equatorial Guinea is the legal uncertainty with which each of its inhabitants has to live. At any moment they can be deprived of their liberty and held in inadequate detention centres, and even subjected to torture, by virtue of a simple 'order from higher authority', with no warrant or legal grounds for that order, and they have no access to an effective judicial remedy to prevent or rectify that situation" (E/CN.4/2000/40, para. 114). In his last report, he therefore repeated his recommendation that "in particular and as a matter of urgency (...), the Government should take the necessary steps to ensure the immediate and full realization of the rights to physical liberty, integrity of the person and the human dignity of detainees, including the prohibition of arrests without a warrant (except when someone is caught in the act of committing an offence) and the beating, ill-treatment or torture of persons deprived of their liberty, and that violations of such prohibitions should be suitably punished" (E/CN.4/2001/38, para. 50). The Commission emphasized this recommendation in its resolutions 2000/19, paragraph 2 (a), and 2001/22, paragraph 2 (a), and indeed such emphasis is necessary, since there has been no substantial change in this worrying situation apart from improvements to the prison buildings in Bata.

2. The Special Representative visited six detention centres on this occasion: the Malabo police station and Black Beach prison, also in Malabo; the Bata police station, gendarmerie and prison; and Evinayong prison. Notable improvements have been made to the prison buildings in Bata, where some 10 toilets and washing and shower facilities for inmates (a total of around 40 at the time of the visit) have been built since January 2001. While there is still room for further improvements in these facilities, they contrast with the insalubrious and humiliating conditions in which prisoners had been obliged to attend to their physical needs in the courtyard. The roofs in Bata prison have also been repaired, there are more beds, mattresses and space available for people, acceptable arrangements have been made to separate women and men and a suitable area has been set aside for religious worship. These improvements are along the lines of Commission recommendations that, as has repeatedly been pointed out, the Government can implement without the need for external technical assistance. The same should now be done in the remaining detention centres and, in particular, in Malabo and Bata police stations, where the sanitary arrangements for persons deprived of their liberty continue to be unhygienic and undignified. The sanitary facilities in Black Beach and Evinayong prisons are moderately acceptable and could be improved. Hygienic conditions in Bata gendarmerie are non-existent, but this is not a legally recognized place of detention.

3. Bata gendarmerie is in fact a military garrison, but it has a cell in which people are detained in violation of the most elementary humanitarian standards. It is known as the "National Gendarmerie barracks" and there, on 13 November 2001, the Special Representative met 17 detainees, crammed into a space approximately 1.5 m wide by 4 m long by 3 m high. Some of them said they had been in detention for as long as four weeks and all said they were suffering from hunger. Among them were four children aged between 13 and 17. The only

sanitation was a plastic bottle by the door, which everyone had to use to urinate. The lieutenant-colonel in charge could produce no warrant for the detention of any of these people. In a list drawn up on the spot by the duty officer at the Special Representative's request - in the absence of even the most elementary prisoner registration system - all were described as being "at the disposal" of the military authorities. The list showed one of the four minors as still in detention, despite the fact that the Special Representative had reminded the officer of the elementary obligation to separate children from adults and not treat them harshly, in accordance with the Convention on the Rights of the Child. The other three children were released, on condition that they reported to the gendarmerie the following day.

4. The Special Representative also returned the following day and found two of the detainees in an appalling physical condition and showing clear signs of torture, after having reportedly been hung up by their wrists during the night. In the lieutenant-colonel's absence, a corporal was in charge and the Special Representative asked him whether it was true that they had been tortured during the night. His reply was spontaneous and revealing: "What do you do in your country to get thieves to confess?"

5. The Special Representative also asked the corporal the exact meaning of the charge of "bringing in unauthorized propaganda", which was noted against the names of two other detainees on the list. They were a Nigerian and a Ghanaian, the only two foreigners listed. His reply was not coherent. Some days later, the Minister of Justice told the Special Representative that they had been detained for selling T-shirts with a picture of Osama bin Laden. The Special Representative asked the Minister whether there was any legislation, old or new, defining the sale of T-shirts with such a picture as an offence. The Special Representative understood from the Minister's response that there was no such legislation.

6. As well as being a favoured place for arbitrary detention, torture and violations of the rights of children, the National Gendarmerie "barracks" in Bata is also a semi-clandestine detention centre. It was discovered almost by chance: the Special Representative and his colleagues were being taken by the government representative to the Bata prison facilities, which are also on the gendarmerie premises, when he caught sight of some of the detainees' hands through the bars of the cell, around 50 m. away. The Special Representative was aware that there was a detention centre somewhere in the gendarmerie, since he had been told as much by a number of victims during his first visit to the country in 1999 and his distinguished predecessors had referred to it in their reports, but he did not know the cell's exact location in the gendarmerie. During his 1999 visit, he repeatedly requested the government representatives coordinating his itinerary in Bata to take him there, but he was continually given excuses, as he indicated in his report (E/CN.4/2000/40, para. 58). On seeing the hands through the bars on 13 November 2001, the Special Representative decided to go and see whether there were in fact detainees behind the bars, as all the signs seemed to indicate, before going on to Bata prison. The officials coordinating his visit attempted to prevent him from doing so, saying that they were not authorized to take him there, as it was a military barracks. The appalling scene that met their eyes when they arrived at the cell made them give up, albeit reluctantly, trying to prevent the Special Representative from finding out about the detention centre. This military prison, semi-clandestine and inhuman, should not continue to be used for detaining civilians or indeed anyone else.

7. While the remaining detention centres are not military prisons in the strict sense, like the gendarmerie barracks, they are nevertheless under barely concealed military control. On his visit to Bata prison, for example, the Special Representative was accompanied by the prison governor (who was at all times extremely courteous and whom the Special Representative had met on his previous visit) and by another person in civilian clothes who introduced himself as the "prison administrator". The following day, when the Special Representative returned to the gendarmerie, he saw this same person walking around the barracks in a commanding manner and impeccably dressed in the uniform of a military captain, which he admitted was indeed his rank. Similarly, at Black Beach prison in Malabo, the Special Representative was courteously met by the prison administrator, who was reported by several prisoners to be a very humane person. A few minutes later, an official in a soldier's uniform appeared, introducing himself as the military commander of the area and, stating that the prison was under his jurisdiction, he exercised his right to be present for the whole of the Special Representative's visit to the prison, with the exception of the individual interviews with inmates, which were conducted in private. At the Bata police station, which is a pre-trial detention centre, the civilian official conducting the visit, who introduced himself as the superintendent, was unable to give any coherent answer to the Special Representative's requests for the most basic information and was constantly accompanied by a military commander, who was clearly the person in charge. As to the Malabo police station, it is administered as a department of the Ministry of Security, which is in charge of the police and the Army, while Evinayong prison is administered by an army colonel and guarded by military guards. The militarization of detention centres is nothing new in Equatorial Guinea and is not unconnected with the militarization of other areas of life in that country, a situation which urgently needs correcting, as the earlier Special Rapporteurs, and this Special Representative, have recommended time and again.

8. The registers of admission and release of those detained in the prisons and police stations visited are poorly maintained. There are no registers at all in the gendarmerie. Such a shortcoming is a threat to personal freedom and the life and integrity of individuals. It is essential to draw up a list of all persons who are effectively detained at any given moment and to keep a strict record of the date and time at which any person deprived of his liberty is admitted to a detention centre, transferred to another centre or released, together with a clear indication of the judicial authority for each act.

9. Within these inadequate registers, the Special Representative found, as he had during his 1999 visit, cases of people who had clearly been detained in police stations without a court order (in addition to all those held in the cell in the Bata gendarmerie, as mentioned above). One person in the Bata police station, for example, had been detained "on the orders of a superior" on 7 November; another had been detained on the same date "by order of the Deputy Director of National Security"; while a third had been detained on 11 November "by order of the Lieutenant-Colonel, Commander of the gendarmerie". The superintendent was unable to explain why these people had been detained by order of a military rather than a judicial authority. He simply said, with regard to the third case, that "the lieutenant-colonel is the investigator in this case". At the Malabo police station, too, the list for 8 November contained the names of four people held "by order of the bosses" and another held "by order of His Excellency the Governor".

10. Not only were there people who had been detained without a court order, but also people who had been released without a court order. In Bata prison, for example, order No 2111, by which the investigating judge in the court of first instance had committed an individual to pre-trial detention on 25 September 2001, was found to have been annotated by hand and duly signed, as follows: "Released by order of the Inspector-General of the Armed Forces. 25 September 2001". This is a clear example of the arbitrary use of power.

11. The incomplete, disorganized lists the Special Representative was able to examine contained the names of several women deprived of their liberty "for failure to pay their dowry". Five of these were in pre-trial detention in Bata prison: one had been there since 23 January 2001; three since 9 February 2001; and one since 4 April 2001. One had been in prison for at least 78 days, as she had been detained on 9 February and was still on the list on 27 April. Another woman at the Bata police station was listed on 9 and 10 November 2001, three days before the Special Representative's visit, as detained "for failure to pay 470,000 CFA francs". As repeatedly stated in preceding reports, such detentions for civil debt violate article 11 of the International Covenant on Civil and Political Rights moreover, are, an affront to women's dignity.

12. Other detentions that violated women's rights were also discovered during these visits, relating, for example, to "abandonment of the home" or the requirement to "certify unmarried status". The Special Representative saw a warrant dated 2 February 2001 at Bata prison, by which the Bata district judge had ordered "the pre-trial detention of Ms. (...), the legal spouse of Mr. (...), for abandonment of the marital home". Another, similar warrant relating to another detained woman was dated 27 October 2000. A third warrant, dated 1 November 2000, ordered the "pre-trial detention of a national of Equatorial Guinea answering to the name of Ms. (...) until such time as she can prove her unmarried status by producing the relevant certificate of divorce".

13. Three women named in another warrant dated 27 October 2000 were in Bata prison for adultery, which seems to be an offence in Equatorial Guinea. A man in the Bata police station was found to have been detained for adultery on 11 and 12 November 2001, the day before the Special Representative's visit. There was no warrant for his detention. The superintendent attempted to justify it on the grounds that the man had been reported and had been detained by police. He was unable to say, however, whether the alleged offender had been caught in the act of committing an offence, which would mean that no warrant was necessary.

14. Other acts which it is doubtful can be described as offences also lead to deprivation of liberty. One individual on the Bata police station list of detainees for 31 October 2001 had been detained on 27 October 2001 for "insulting the First Lady and stealing a car". The Special Representative had already come across cases of detention for alleged insults to authorities during his 1999 visit. On this occasion, in November 2001, the superintendent was unable to produce any warrant justifying the arrest or to explain the connection between the charges of insults and car theft, much less to say which judicial authority had ordered the detainee's release.

15. The visits to the detention centres confirmed that deprivation of liberty on grounds of witchcraft, sorcery or black magic ("kong" in the Fang language; "mokuku" in the Ndowe language), or associated acts, is commonplace. Two women in Bata prison were found to

have been detained, by order of the Appeals Court, "for the offence of possession of poison". One man had been serving a sentence there for four years after having been convicted of murdering his aunt by sorcery. In his words, "My aunt put spells on my children and they began to die. So I took her to the healers and she died". The Special Representative interviewed another person detained on similar charges in Evinayong prison, who had been deprived of his liberty for 44 days. While it cannot be denied that sorcery is practised in Equatorial Guinea and is used to cause harm, nevertheless, except in cases of homicide by poisoning or some other direct physical act, it is doubtful whether any judicial authority could rationally establish a causal link between an act of sorcery and the alleged harm and thus assign legal responsibility. Indeed, charges of this kind help to conceal abuses of power under what appear to be legal decisions, but lack any guarantee of due process. It is important to clarify what traditional justice consists in and how it relates to the formal justice system.

16. The Special Representative met a number of special prisoners in the Malabo police station who had been detained "on behalf of" a multinational company, as the superintendent put it. There was no warrant for their deprivation of liberty and they had not been detained "on superior orders"; they had been held in the police station for several days in an enclosure in the prisoners' yard while the company investigated the loss of some money in which they had apparently been involved. There were five or six people, one of them a woman and the majority of them foreigners from neighbouring countries. The Special Representative mentioned the situation to the Minister of Labour, who was quite convinced that it must be a misunderstanding on the part of the Special Representative. Yet the superintendent said these prisoners were under a special detention regime, as was shown by the fact that they were not sent to work outside the police station like the other prisoners.

17. As the Special Representative and his distinguished predecessors have mentioned in their reports, persons deprived of their liberty in the various detention centres are commonly subjected to forced labour. The Special Representative saw with his own eyes an order dated 23 January 2001 in Bata prison, signed by the Bata district judge, which read as follows, word for word: "I hereby request the Administrator of the public prison of this city to order seven prisoners to appear or, rather, to form a party to clean the building housing the Ministry of Justice and Worship, the District Court and the Bata District Court tomorrow, 24 January 2001, in anticipation of a visit to be made there shortly". The files contained other documents of the same kind. At Black Beach prison, the Special Representative was informed that one of the prisoners on the list was not present because he had been "sent to the Minister Delegate of Security's house to wash dishes or something". It is common for the prisoners in Malabo, Bata and Evinayong to be taken out to mow lawns or clean the streets. As has been repeatedly pointed out in preceding reports, such work may have positive benefits for prisoners, provided the jobs are done voluntarily and decent remuneration is guaranteed, in accordance with International Labour Organization (ILO) conventions. However, current practice shows that the authorities consider it perfectly normal that the very fact that a person has been deprived of his liberty means he can be compelled to provide whatever services they decide free of charge.

18. The Special Representative met other special detainees on his visit to Evinayong prison. One of the lists of detainees provided by the prison authorities contained 10 names that were marked as "in need of brainwashing". On another list they were referred to as "mentally

deranged". At the Special Representative's request, a judicial official there explained that these were people who were being "re-educated". The Government Representative intervened to say that was completely untrue and it was all a mistake.

19. The 10 people on that list were part of a group of people belonging to the Bubi ethnic group who had been convicted of an armed attack carried out on the island of Bioko on 21 January 1998 and had been transferred from Black Beach prison to Evinayong in March 2000. Many of them had complained at being so far from their families, since they were thus deprived of support and of the food their families used to bring to the prison on the island, and many of them therefore wished to return.

20. Another special detainee the Special Representative met in Black Beach prison is kept permanently manacled. He can move around his cell, but is unable to move his arms freely and one day when cooking his food he burned his hands severely; the burns are still visible. He received no medical attention and tried to treat himself. He is serving a sentence for murder and has escaped from prison on a number of occasions. The authorities claim he must be kept manacled, for he has the power to turn himself into a snake and would otherwise escape from prison again as he has done in the past. No doubt this prisoner has indeed shown a remarkable ability to escape from prison, but clearly other ways must be found to prevent that happening, which do not violate, as this does, the Standard Minimum Rules for the Treatment of Prisoners and related provisions adopted by the Economic and Social Council and the General Assembly of the United Nations.

21. The food in these detention centres is inadequate. Efforts are being made in Black Beach, Bata and Evinayong prisons to improve the prisoners' monthly ration of, among other things, rice, oil, sardines and soap. But, despite such efforts, the rations are meagre and detainees cannot obtain a reasonable amount of food without assistance from their families. Greater efforts need to be made in this regard.

22. On 30 December 2000, to mark the third millennium, persons deprived of their liberty were granted pardons or commutations of sentences, under Presidential Decree No. 98/2000. Several of those detained in Evinayong prison expressed their gratitude at this measure, not least because it meant that older prisoners would be released who otherwise would have died in prison.

23. The Special Representative and the Special Rapporteur on the question of torture wrote to the Government on 20 September 2001 requesting information on Mr. Emilio Ribas Esara and Mr. Gregorio Bomuagasi, who were prisoners from Evinayong prison as a result of the events of 21 January 1998 and at that time in Bata Hospital awaiting a surgical operation, for which they were required to pay in advance. During his visit, the Special Representative was able to verify that his urgent appeal had been heard and that the two men had been operated on in September.

B. Right to due process (and independence of the judiciary)

24. Like his distinguished predecessors and other United Nations experts, the Special Representative has repeatedly drawn attention to the absence of an independent, qualified judiciary in Equatorial Guinea and the resulting need "to ensure that the required separation

between the executive branch and the judicial branch is achieved, to train judicial officers, to promote the prosecution of human rights violations and to restrict the jurisdiction of military courts, which should not have competence in respect of civilians" (E/CN.4/2001/38, para. 69). Nothing has changed in this regard and, because of the legal insecurity that prevails, the arbitrary detentions, inhuman treatment and torture described in the preceding section continue as if they were perfectly normal.

25. Significant changes could begin to be made if the Government were to implement the undertaking it made to the Special Representative in this regard, to the effect that the competence of military courts would be redefined in 2002 to ensure that civilians would be tried only by civilian courts and not by military tribunals.

26. It would also be a very positive development if the Government's invitation to the Special Rapporteur on the independence of judges and lawyers and to the Special Rapporteur on the question of torture, made in March 2001 and repeated in November 2001, were to be taken up.

27. A point that must be emphasized is that the independence of the judiciary must be guaranteed not only during the trial stage, but also, and most particularly, during the preliminary investigation or criminal inquiry stage. The Special Representative found clear evidence that, even on those occasions when formally carried out by a judicial authority, such enquiries are in fact conducted not by the judiciary, but by the executive branch, through its security agencies and military and police officials. At Black Beach prison, the Special Representative was shown memorandum No. 706, dated 9 November 2001 and signed by a judge in the lower court of Malabo, which addressed the Minister for National Security in the following terms: "Dear Sir: In reply to your memorandum No. 603, dated 31 October (...), requesting me to extend the period allowed for the preliminary investigation in respect of the case of the State General Treasury officials and the diversion of tax revenue, (...), I have this day decided to grant your request and allow you the time needed for the conclusion of said inquiries and their subsequent submission to this court, together with the accused".

28. Less subtle and formal is the manner in which the lieutenant-colonel in command of the Bata gendarmerie - who, as shown in the preceding section, is regarded by the superintendent of police as the natural investigator in such cases - takes charge of the inquiry without the need for a court order to that effect.

29. The Special Representative found a fresh cause for concern on his latest visit, in trials conducted by the House of Representatives of the People. These trials may in some cases inspire the lively hope that justice will be done because they involve hearings in which a representative who stands accused is held accountable by the people. However, such proceedings are not limited to trying charges against representatives alone, and not only in respect of their political responsibilities, but may involve any person on any charge; this is an encroachment on the competence of the judiciary proper, without full legal guarantees, and constitutes justice of a populist and highly unreliable nature.

30. In August 2001, the corpses of four people were found with their genitals cut off: the bodies of two older men, a boy of 10 and a newborn baby boy were reported to have been found in various parts of the mainland and on the island of Bioko. They were part of a fresh wave of "ritual" crimes, as worrying for the fact that they occurred at all as for the fact that the perpetrators have not been brought to justice.

31. During his visit to Equatorial Guinea, the Special Representative found that the authorities justified many human rights restrictions and violations by the need to deal with terrorism, as other countries have done since the tragic and reprehensible events of 11 September 2001. Paragraph 5 of this report refers to one example of this, but it is not the only case: time and again, the authorities argued that, if other, more developed countries had decided to adopt arbitrary measures to prosecute and deal with those who represent a threat to their security, all the more reason for a small, defenceless country such as Equatorial Guinea to do so. This line of argument is not acceptable, since, besides undermining international human rights obligations, it creates greater national and international insecurity, as has been shown historically. The Special Representative urges the Government and the international community to take all necessary measures to ensure that the fight against terrorism, vital though it is, provides not a pretext for arbitrary action, but the impetus for the strict implementation of international obligations to respect and protect human rights, obligations that States have assumed in the course of their arduous task of building a civilized world.

C. Right to vote and to be elected

32. A political crisis early in 2001 led to a change of Government on 23 February, after charges of corruption had been levelled at some members of the Government of Prime Minister Angel Serafín Seriche. President Teodoro Obiang appointed Mr. Cándido Muatetema Ribas the new Prime Minister.

33. On 23 and 24 February 2001, the Convergencia para la Democracia Social (CPDS), a member of the Socialist International and the only legally recognized party not belonging to the governing coalition, held in its annual conference in Bata. Participants included representatives of the Spanish Socialist Workers' Party and other international observers and financial support was provided by the Government. According to CPDS, the party has a right to such support because it is an institution of the State.

34. On 26 September 2001, the Government and the 13 legally recognized parties (the Government's party, 11 other parties belonging to the governing coalition, and one opposition party, CPDS) signed a second agreement on the evaluation of the National Pact signed in 1993. The first evaluation of the National Pact took place in 1997. The second agreement on evaluation contains seven main points, which can be summarized as follows:

(1) A review of the composition of the Supervisory and Monitoring Commission and measures to ensure its functioning;

(2) The abolition of the Commissions on Access to the Communications and Survey Media and the transfer of their functions to the Supervisory and Monitoring Commission;

(3) An undertaking to legalize applications for recognition by political parties; prevent the use of roadblocks to extort money from the population; end the requirement for exit visas to leave the country; put a stop to extrajudicial detentions; end the collection of contributions for any party through the public administration, and enforce the ban on judicial officials and members of the armed forces joining political parties;

(4) A proposal that the Government should give full powers to the Supervisory Commission to investigate violations of the Pact and strengthen the judiciary;

(5) The resolution of internal divisions within certain political parties at a special conference or by decision of the Ministry of the Interior, after having heard the opinion of the Supervisory and Monitoring Commission; simplification of procedures in order to facilitate the installation of private audiovisual media; an undertaking to end the smear campaigns conducted through the media; the prohibition of voting in public; the prohibition of demands to produce the membership card of any political party in order to obtain employment; an undertaking by all parties and the Government to comply with the law;

(6) The continuation in force of the Code of Conduct which was adopted in 1997 and governs the relationship between political parties and the Government;

(7) The postponement of the study on a draft agreement on the status of the democratic opposition; and of the classification of parties.

35. Although CPDS signed this agreement, it did so with reservations because, as its spokespersons explained to the Special Representative, the negotiations did not address important issues such as the next elections and the electoral process, the presence of international observers and elections to minor local bodies (village councils). Elections to the minor local bodies are supposed to be held every three years, but were last held in 1989.

36. While the revision of the Pact could represent an important step forward in the dialogue with the opposition, the Special Representative notes that many of the undertakings were already included in the preceding agreement. In particular, the undertaking to legalize applications for recognition submitted by political parties in accordance with the law was already part of the 1997 agreement. Although the Government considers that there are no applications outstanding, the Fuerza Demócrata Republicana (FDR) party claims that its application has not been dealt with and that its activists suffer some of the worst discrimination and persecution. Meanwhile, the Partido del Progreso, which was declared illegal in 1997 under a criminal sentence imposed on its leader - and, for no good reason, on the party itself - claims that the Government has not resolved the appeal it lodged against that decision. The clause on resolving internal problems within the parties gives cause for concern, particularly in the case of the Unión Popular (UP) party. There are also doubts about the effective implementation of the undertakings made in the agreement, given that around 20 CPDS activists who were invited to take part in a seminar in Spain in November has difficulties leaving the country because an exit visa was required, despite the fact that the abolition of exit visas had been agreed in the National Pact in 1993 and was included once again in the second agreement on evaluation.

37. The Special Representative has received the following information on the harassment of opposition activists:

(a) The CPDS party newspaper *La Verdad* reported that Mr. Venancio Elonga had decided to join the government party because of the constant harassment he and his family were subjected to and the difficulties opposition militants had to live with. In his letter of resignation from the CPDS National Executive, published in *La Verdad* issue No. 42, he said that "the party needs men who have the financial security (...) to maintain their family and who can thus be sure they will be able to fend off the physical, psychological and moral attacks of government authorities, family members and society (...). It is with the greatest regret that I inform my colleagues that I have reached rock-bottom; I do not wish to lose my life or my family, who have been virtually homeless for years".

(b) On 6 March, on his return from the CPDS national conference, Mr. Benito Oyono Biyang Ayeceba was reportedly detained by the Government Representative in Niefang for around five weeks after having been subjected to repeated pressure by the authorities to leave CPDS and join the government party.

(c) The former Mayor of Malabo, Mr. Victorino Bolekia, feeling himself persecuted by the Government following the end of his term of office as mayor in June 2000, decided to go into exile in Spain. Mr. Bolekia stated that those who oppose the government party are persecuted and he accused the Government of causing the crisis in his own party, the Alianza Democrática Progresista (ADP).

(d) In August 2001, the District President of UP, Mr. Andrés Eguang, together with his secretary and six activists, were detained in Nsok Nsomo district prison on charges of holding an illegal meeting in a public establishment. Military forces were said to have carried out the arrest without a warrant.

(e) Mr. Felipe Ondó and Mr. Guillermo Nguema, the former Ministers for Foreign Affairs and Finance, respectively, who had served a prison sentence until 13 March 2001, reported that they had been subjected to constant harassment, to the point where two taxi drivers whose services they used had been intimidated, one by fines and the other by beatings, to stop them driving for them. The Government refuses to issue a passport to Mr. Ondó. One of Mr. Nguema's brothers, Mr. Julio Ndong Elá, who was a Minister of State of the Interior, was compelled to leave public service because the Government considered he had not put sufficient pressure on his brother to make him stop his opposition activities. He says he has been obstructed and persecuted since 1998 in the economic activities he has embarked on in order to make a living.

38. In his last report, the Special Representative drew the attention of the Government and the Commission to a negotiating formula put forward by opposition parties in exile, most of them not legally recognized; the proposal was repeated in 2001 and deserves due consideration with a view to improving the country's human rights situation (E/CN.4/2001/38, paras. 28 and 29).

D. Freedom of movement

39. The removal of military roadblocks (which prevent movement within the country and are sources of abuses of the population), the elimination of the requirement of visas to leave the country and the abolition of the practice of internal exile have been recommended time and again. These three issues were the subject of discussion and agreements during the evaluation of the National Pact in September 2001, to which reference was made in the preceding section of this report.

40. The issue of the roadblocks will continue to be controversial. In the evaluation agreement, the Government agreed to undertake to adopt measures to prevent the roadblocks from being used for extortion. The Minister Delegate for Security also explained to the Special Representative that, as a result of the National Pact, roadblocks will be reduced, but not eliminated: in addition to all the roadblocks that have been set up along the land border to monitor the entry of immigrants, there will still be two fixed or military roadblocks on the continent (one in Niefang and the other in Ncué, at the intersection of Mongomo and Ebebiyín) and two more on the island of Bioko (one at kilometre 5 and another in Banapa). For the opponents, however, the roadblocks are a genuine obstacle to freedom of movement, as well as a means of keeping track of their political activities. It is therefore not reassuring that a special report submitted to the Special Representative by the Government states that "the existing roadblocks in the country (...) have the consensus of all political parties".

41. Members of opposition parties continue to be subjected to internal exile. Representatives of Fuerza Democrática Republicana (FDR) are said to be in exile in their home towns in the district of Mongomo. The agreement on the amendment of the National Pact states that "if cases of internal exile do exist, the political parties will submit them to the Government to have them stopped". The FDR party is not a recognized political force and did not sign the agreement, so there is no certainty that the internal exiles affecting it will stop.

42. As also indicated above, the Government formally undertook in the agreement to amend the National Pack immediately to stop requiring exit visas, even though it did require them in November from members of CPDS invited to take part in a seminar in Spain. The Special Representative urges the authorities to implement the provisions of the Pact so that the Government's stated intentions may become a reality.

43. On 8 March 2001, the Special Representative wrote to the Minister for Foreign Affairs and the Minister of Justice to request information on Mr. Donato Ndongo-Bidyogo, who has been living in Spain for 20 years and whose application for the renewal of his passport, which expired in 1999, was allegedly turned down. He was therefore also unable to renew his residence and work permits in Spain and could not receive social security. As the Human Rights Committee stated in its General Comment No. 27 (1999), "in order to enable the individual to enjoy the rights guaranteed by article 12, paragraph 2, obligations are imposed both on the State of residence and on the State of nationality. The issuing of passports is normally incumbent on the State of nationality of the individual. A refusal by a State to issue a passport or prolong its validity for a national residing abroad may deprive this person of the right to leave the country of residence and to travel elsewhere".

E. Rights to equality and self-determination (racial discrimination)

44. In earlier reports, the Special Representative and his distinguished predecessors expressed concern about the discrimination practised by the Fang, who are the majority ethnic group in the country, against the Bubi, who are the majority ethnic group on the island of Bioko, where the capital is located, and urged the Government to accede to the International Convention on the Elimination of All Forms of Racial Discrimination and to take account of General Recommendation XXI (48), adopted by the Committee on the Elimination of Racial Discrimination in 1996, so that the Bubi people's right to self-determination could be recognized without jeopardizing the right to the unity and sovereignty of the State. The Special Representative has also received complaints of discrimination against other ethnic groups in Equatorial Guinea, such as the Ndowes and the Bissios (who live along the coast of Río Muni province), the Bengas (from the islands of Corisco and Elobeyes), the Annoboneses (from the island of Annobón) and the Criollos or Fernandinos (descendants of immigrants from Sierra Leone and other neighbouring countries in past centuries).

45. During the Special Representative's visit in November 2001, the Government told him that it had decided to accede to the above-mentioned Convention in 2002, in March at the latest. The Special Representative welcomes this decision with satisfaction, hopes that it will be implemented and encourages the authorities to fulfil the obligations for which the Convention provides.

46. On 2 and 3 April 2001, a serious incident occurred in the town of Batete on the island of Bioko when a dozen or so soldiers beat up some of the inhabitants, demanding money from them, looted houses, beat up the chief and vice-chairman of the town, insulted the Government representative, calling him "Bubito" (diminutive of Bubi), imposed fines and arrested several persons, including the President of the Council.

47. The Prime Minister told the Special Representative that there had been a detailed investigation into the incident and that it had been concluded that it originated in lovers' quarrels between some of the persons involved. Quite apart from this reason, the incident is serious, the victims have not received compensation for violations of many of their rights and the persons responsible have still not been punished.

48. Several persons expressed concern that foreigners, especially from West Africa (Cameroonians, Nigerians, Gabonese, Ghanaians and Togolese), were persecuted in 2001 on the pretext of determining which ones are in the country illegally. From 22 to 26 October, there was a raid which led to over 200 arrests. There had been another in May. The Minister Delegate of Security told the Special Representative that there had been such raids, but that they were not "carried out all the time, only every six months". The Special Representative makes a special appeal to the authorities to prevent xenophobic activities from being carried out in this way.

F. Right of association (and protection of human rights defenders)

49. In its resolutions 2000/19 and 2001/22, the Commission called upon the Government to authorize, "without any undue restriction, the public registration and freedom of activity of non-governmental organizations in the field of human rights and social affairs" (paras. 8 and 7,

respectively). However, there has still been no change to Act No. 1 of 1999, which governs the operation of non-governmental organizations, but does not cover those involved in human rights work.

50. The Government maintains that this omission does not mean that human rights organizations are prohibited in Equatorial Guinea. Unfortunately, none has been authorized. There is every indication that a poorly disguised attempt is being made to prevent them from existing. A report prepared especially by the Government for the Special Representative thus states that "the country is open to non-governmental organizations in the field of human rights and other social issues, but, in order to authorize them, the Government will have to know what the project is and there will have to be transparent accounting to certify that they are actually in the service of human rights in the country".

51. On 11 May 2001, the Special Representative of the Secretary-General on human rights defenders wrote to the Government of Equatorial Guinea to request information on this question and on the situation of the human rights organizations which requested legal recognition in the past and are still waiting for the authorities to take their case into consideration. In her communication to the Government, the Special Representative expressed her concern, since these factors do not make for an open dialogue on human rights in the context of civil society.

52. The only trade union in the country is the Small Livestock Breeders' Trade Union, which was established in 2000 and is in fact an employers' association, according to the Ministry of Labour. The Government told the Special Representative that it is waging an information and awareness-raising campaign for all workers so that, in the first quarter of 2002, they may form trade unions with the Government's institutional and technical support.

G. Freedom of the press and right to information

53. Although freedom of the press is guaranteed by law, the country does not have a daily press organ. The only magazine which is published with some regularity is *La Gaceta*, which appears about once a month. The Equatorial Guinean people thus has very limited access to information.

54. The Minister of Information told the Special Representative that the entry of foreign periodicals is no longer prohibited and that passengers who bring them in when getting off a plane are no longer punished, as before. In the Minister's words, "years ago, a citizen found with a foreign periodical would go to prison but, now, the Government's attitude has put a stop to this, even though no one ordered it". During the visit, it was found that at least one shop in the capital was selling Spanish periodicals left behind in aeroplanes. Although this opening up is a positive sign, it cannot meet the country's demand for foreign publications, since no organization in the country systematically imports them - a task that could be encouraged by the Government. The Special Representative asked the Minister when people had stopped being arrested for bringing in newspapers. He replied: "I cannot say when or how long it will last".

55. The Minister showed the Special Representative decisions No. 06 and No. 07 of 20 September 1999, which authorized the operation of the newspapers, *La Opinión* and *El Tiempo*, respectively. The Minister confirmed that, as stated in preceding reports of the

Special Representative and his distinguished predecessor, there had indeed been some undue delays in the authorization for the operation of these two newspapers: "When I came in, I found applications which had gone unprocessed for years, such as that of *El Tiempo*. We authorized it in one morning, without asking anyone, since the rules are there and no one in the Government told us anything".

56. The Minister also told the Special Representative that his Office was analysing the application submitted in April 2001 for the legalization of a new periodical entitled "Liberación". After he left the country, the Special Representative learned that the application had been rejected because its name would imply attacks on democratic principles. Article 32 of Act No. 13/1992 on freedom of the press and freedom to impart information does not provide for refusals based on the name of the press organ in question.

57. It was reported to the Special Representatives that, on 21 February 2001, the mayor of Malabo, Mr. Gabriel Mba Bela, ordered the immediate closure of the headquarters of the Press Association of Equatorial Guinea (ASOPGE) "until further notice". The mayor did not explain his decision.

58. On 6 June 2001, the Special Representative and the Special Rapporteur on freedom of opinion and expression transmitted a communication on the case of Mr. Pedro Nolasco Ndong, President of the Press Association of Equatorial Guinea (ASOPGE), who was arrested at the airport in Malabo on 13 May 2001 when he was returning from a seminar organized by UNESCO on the occasion of International Press Freedom Day. Without giving him any explanations, the police confiscated a report on the situation of freedom of the press in Equatorial Guinea since 1991, all of the documentation distributed at the seminar and US$ 100. Although Mr. Pedro Nolasco Ndong contacted the Ministry of the Interior, the General Security Department and the Ministry of Information to have the documents that were confiscated returned to him, he has still not recuperated any of his belongings.

59. According to press information, on 12 June 2001, the Director General of National Security, Mr. Antonio Mba Nguema, ordered that Radio Asonga, a private station belonging to Mr. Teodoro Nguema Obiang Mangue, the son of the President, should be shut down because he was carrying out activities contrary to the country's policies by broadcasting threatening information against senior army officials and inciting the population by means of a radio station belonging to him.

60. On 27 June 2001, three soldiers confiscated the identity card of Mr. Daniel Darío Martínez Ayecaba, editor of the newspaper *El Tiempo,* and forced him to pay a fine of 5,000 CFA francs to get it back. When asked why they had taken his document, the sergeant said that he was "one of the ones who was writing articles against the Government in order to stir things up". The journalist went to the police to report the incident, but they told him that it was a personal problem between him and the soldiers and that there was nothing they could do.

61. With a computer, a printer and a photocopying machine, as suggested by the Special Representative, the Government set up an official printing office in 2000 which publishes the *Boletín Oficial del Estado* containing laws and administrative acts. It has eight employees and brought out 37 issues between January and November 2001, i.e. an average of about one issue

per week. Periodicity and print run are still not regular and depend on the initiative or requests of ministers, who are the main users. There is a public distribution box in a hotel in the capital. These aspects are all subject to improvement, but it is to be welcomed that it has been realized how important the regular publication of legal provisions is.

I.2. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. General economic situation

62. Since 1995, Equatorial Guinea has been experiencing an oil boom. It is estimated that production, which amounted to 7,000 barrels a day in that year, now stands at over 300,000 barrels a day, but there are no official figures. According to the Ministry of Labour, the oil sector accounts for 20 per cent of formal employment and 97 per cent of Equatorial Guinea's GDP, while the Human Development Report 2001 published by UNDP, states that GDP rose from US$ 1,817 in 1998 to US$ 4,676 in 1999, an increase of 233 per cent.

63. In 2001, an IMF mission examined changes in the economic and financial situation since its last mission in 1999 and found that oil resources are being handled without transparency and without fiscal control over payments made by oil companies. The recommendations made in 1999 that all resources from the oil sector should be channelled into a single open account in the Bank of Central African States have not been implemented and many of these resources are in accounts abroad. Timber production has declined in the past year, but it is still fast paced, i.e. 50 per cent higher than the desirable level of sustainability, according to the IMF.

64. According to the Human Development Report 2001, Equatorial Guinea has moved up from 131st to 110th place on the Human Development Index and is now in the group of medium human development countries. In his preceding report, the Special Representative pointed out that the greater wealth produced in the country has not been converted into effective human development. This trend continues at an alarming rate, since the gap between GDP and the Human Development Index has gone from -4 points to -31.

B. Right to health

65. According to the Minister of Health, the Government has put a great deal of effort into the rural health and food safety programme since late 2000, but the results can be evaluated only in the future. Well digging and latrine construction programmes have been carried out with UNICEF's support. Some private companies and the national Red Cross are implementing a programme to improve the rural population's health conditions.

66. The Minister informed the Special Representatives that there had not been any substantial progress in action to combat malaria and AIDS, although there are two programmes for these diseases. The malaria mortality rate is still high. According to studies on AIDS, there has been an increase in HIV/AIDS morbidity. The HIV rate is estimated to be 7 per cent, with one of the highest rates of increase in Africa. The Government is in the process of drawing up programmes which emphasize education and prevention and involve the introduction of sex education courses in schools, the distribution of condoms and awareness-raising programmes.

67. Health conditions in most of the country continue to be poor. Of 300 public health posts created in 1983, only 117 are still in operation, while 89.8 per cent of senior health workers are in the cities of Malabo and Bata. Government sources told the Special Representatives that US$ 1 million had been spent on medicines. According to non-governmental sources, the purchase was made without regard for needs in terms of diseases or the country's existing storage capacity. Many of these medicines could not be used.

68. On the basis of a recent bilateral cooperation agreement concluded with the Government of Cuba, 150 Cuban health professionals (doctors and paramedics) should arrive in Equatorial Guinea to improve the national health service and open health centres in the field. With the 68 national doctors and thanks to the presence of Nigerian, Chinese and Spanish doctors, the doctor/inhabitant ratio should improve to 1 doctor for every 2,459 inhabitants. As part of the same agreement and thanks to Cuba's support, the University of Equatorial Guinea now has a medical school and some 80 young people from Equatorial Guinea have the possibility of studying medicine in Cuba. Experts consider that the health situation should improve in the near future as a result of these initiatives.

69. The Special Representative was told that, although there are budget resources, the various ministries, including the Ministry of Health, face serious problems in using the funds because of cash flow problems. The Special Representatives urges the competent authorities to change the system for the disbursement of funds so that public administrative departments may carry out programmes satisfactorily and punctually.

C. Right to work

70. According to information received from the Minister of Labour, the labour sector is a priority government objective. As a result of the increase in oil production, Equatorial Guinean emigrants are returning to the country and foreign workers are coming in, thereby causing a rural exodus and bringing more women into the labour market. Foreigners account for 20 per cent of oil workers. The remaining 80 per cent are 4,000 to 7,000 Equatorial Guinean workers from the economically active population in the formal sector, which numbers more than 30,000. If the rural population, which represents 73 per cent of the total, was counted on the basis of other labour criteria, the economically active population would number about 150,000 persons, according to the Minister of Labour.

71. The Government states that it is making efforts to bring about greater labour market flexibility with a view to the conclusion of collective agreements. In order to amend the country's labour legislation, the International Labour Organization carried out a mission in April 2001, but the results were not available at the time of the Special Representative's visit to the country.

72. It is a matter of concern that companies with collective agreements continue to take a very large percentage of the wages to which workers are entitled, i.e. in some cases, as much as 70 per cent, according to reports.

73. In the past two years, the Government ratified the following ILO conventions: Convention No. 29 concerning Forced Labour, Convention No. 105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize, Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively, Convention No. 111 concerning Discrimination in Respect of Employment and Occupation and Convention No. 182 concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labour.

74. The Special Representative welcomes the commitments made by the Government as a result of the ratification of the above-mentioned Conventions, as well as the signature of the second agreement on the evaluation of the National Pact, which prohibits companies offering jobs from requiring a document proving non-membership of any political party. The Special Representative urges the Government to take effective measures to implement the agreement and to ensure that opponents who were dismissed from their jobs in the past may get them back or be given priority for new jobs. All opponents stated that the government party membership card continues to be essential for hiring in both the public and the private sectors.

75. The Special Representative also draws attention to the Government's undertaking in the second agreement on the evaluation of the National Pact to order Government payers to stop collecting fees on behalf of a particular political party. This implies that there is a tax for Government workers in favour of the official party. The Special Representative expresses the hope that this important undertaking will be complied with in respect of the right to work and the right to political freedoms.

D. Rights of girls and boys

76. The Special Representative welcomes the fact that Equatorial Guinea has finally submitted its first report to the Committee on the Rights of the Child. The report was completed in March 2001 and a copy was given to him during his visit.

77. The introduction to the report indicates that problems such as children deprived of liberty and the sexual exploitation of minors are not dealt with because they do not exist in Equatorial Guinea. However, the Special Representative found children deprived of liberty in the Bata gendarmerie sharing a cell with adults, as indicated in the section on the right to physical freedom. The Special Representative urges the prison and police authorities to comply with article 37 (b) of the Convention on the Rights of the Child: "States parties shall ensure that: ... No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest ... shall be used only as a measure of last resort and for the shortest appropriate period of time".

78. The Government's report to the Committee on the Rights of the Child maintains that, in Equatorial Guinean society, beating is still regarded as a necessary and effective means of punishing children (para. 109). The practice of depriving children of their liberty as a punishment inflicted by their parents is also a matter of concern. It must be regarded as a consequence and an aberrant form of the custom of punishing children as a means of educating them. The Special Representative encourages the Government to make society aware of the need "to protect the child from all forms of physical or mental violence, injury or abuse, neglect

or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child" (art. 19, para. 1, of the Convention on the Rights of the Child).

79. The Minister of Health and the Minister of Social Affairs admitted to the Special Representative that there has a been a marked increase in the presence of child prostitutes in the streets of the capital as a result of the arrival of growing numbers of foreigners who work on the drilling platforms. The Minister of Social Affairs stated that she intended to carry out a study to formulate a plan of action against child prostitution. The Special Representative urges that the plan should be formulated and implemented as soon as possible.

80. A recent report by the Ministry of Labour and UNICEF denounces the appalling conditions in which about 150 children of Benin and Nigerian nationality being subjected to forced labour live in Malabo and Bata. According to the study, 50 or 60 girls from Benin, aged between 8 and 16 years, are working in the Malabo market. They all belong to poor families who give their children to third parties to receive money in exchange for their labour, education and vocational training, which does not always take place. They are usually threatened by their parents or guardians, who deprive them of passports or identity papers. They do not speak the language of the country and do not receive any kind of education. The Nigerian children, who are between 12 and 15 years old, are to be found mainly in Bata. They work 12 hours a day without pay until the age of 18 or 19.

81. According to the same report, Equatorial Guinean children work long hours throughout the country in domestic, agricultural and commercial jobs and this may jeopardize their education and impair their health and physical, mental and moral development. The local authorities and teachers state that there is a link between child labour and the high drop-out rate (only 19 per cent of children who start primary school finish it) and the repetition rate (50.1 per cent).

E. Right to education

82. In his two preceding reports, the Special Representative expressed concern about the low proportion of State expenditure on education (5.6 per cent), late entry into the school system and high drop-out rates, more so among girls than among boys.

83. The Minister of Education told the Special Representative that this situation is changing and that the development strategy document for Equatorial Guinea sets the target of earmarking at least 15 per cent of Government revenue for education. The target is being met, since it stood at 17.8 per cent in the 2001 budget (5.8 per cent for current costs and 12 per cent for investment) and, in the budget adopted for 2002, investment in public education increased to 15 per cent. Within six months, it will thus be possible to build 250 schools, with two classrooms each, in 250 different villages (not counting the schools which are being built by logging companies to pay taxes in kind). The Minister said that "Equatorial Guinea had never spent so much money on education prior to 2001", and that he was "the wealthiest Minister in terms of the human and financial resources made available to him".

84. The Minister also indicated that, in July 2001, his Office had selected 1,400 new teachers by competitive examination, mostly for primary education, i.e. about half the number of teaching staff until that time. The aim was to halve the teacher/pupil ratio, which stood at 67 pupils per teacher during the school year ending in June 2001. The University Teacher Training School was established in order to improve teacher training, which is one of the main problems the country faces, and three teacher training classes have already graduated. Another major problem which the Ministry intends to solve with the assistance of Spanish cooperation is the updating of the curriculum, which goes back to 1987.

85. The Education for Development Project is being implemented with UNICEF's cooperation and it has two objectives to be achieved between 1999 and 2003: to raise the percentage of children who complete the first two years of primary school from 50 to 70 per cent and to increase the percentage of girls who complete the fifth year of primary school from 9 per cent to 18 per cent. UNICEF also provided assistance for a project that started 10 years ago to deal with and prevent late entry into school, based on informal preschool programmes (three to five year olds). Some 900 teachers will be assigned to these programmes.

86. There are no teachers' associations in Equatorial Guinea and the Ministry does not see why they should exist, an attitude which the Special Representative urges it to reconsider so that these associations may help democratically to satisfy the country's enormous educational needs and to meet the important challenges identified by the Ministry during this period of economic boom.

F. Status of women

87. Unlike the Minister of Education, the Minister of Social Affairs and the Status of Women expressed concern about the fact that, like others, her Office does not receive enough funding to carry out its activities. In November 2000, the Government's contribution to the Ministry accounted for only 0.23 per cent of the State budget and it was not always available owing to cash flow problems, as referred to in the section on the right to health.

88. The Special Representative and his distinguished predecessors and the Commission have recommended time and again that Equatorial Guinea should end the practice of imprisoning women for not returning their marriage dowry when they separate from their husbands, something which is blatantly contrary to article 11 of the International Covenant on Civil and Political Rights and prejudicial to the dignity of women. The Special Representative made it clear to the authorities that this comment is a criticism not of the dowry institution itself, but of some of its adverse effects. The section on the right to physical freedom described various cases of women imprisoned in the Bata police station and jail for not having returned their marriage dowry, one of them three days before the Special Representative's visit. The Government informed the Special Representative that, on account of the pardon granted by the President to start off the year 2001, the Government instructed detention centres not to admit women deprived of their liberty for reasons involving the marriage dowry. In cooperation with the Ministry of Social Affairs and the Status of Women, the Ministry of Justice and Worship is making every effort to regulate and amend customary civil law so that, in future, customs which are contrary to the law will no longer exist in Equatorial Guinea and the full implementation of

the principle of the interpretation of the entire legal system on the basis of the Constitution will be guaranteed. The Special Representative urges the Government not to hesitate to adopt the necessary measures so that women and other persons will no longer be imprisoned for not returning the marriage dowry.

89. Another matter of concern is the detention of women for alleged abandonment of the home, adultery or failure to certify their unmarried status, as referred to in the section on the right to physical freedom.

90. In his preceding reports, the Special Representative expressed concern about other types of discrimination against women, which are reflected in the fact that female illiteracy is three times higher than male illiteracy and the number of women who go on to the level of secondary education is half that of men, among other examples. According to official information from the Ministry, the situation has not improved much, owing to problems of a legal nature (lack of harmonization of national legislation with international instruments and subsidiary application of the Franco-era Spanish Civil Code, which does not favour women on important matters relating to marriage status) and problems of a customary nature (continued existence of discriminatory traditional practices against women, such as the above-mentioned imprisonment of women to force them to return the dowry and the lack of shared authority of the parents within and outside marriage).

91. The participation of women in social and public life continues to be minimal. In the ministerial cabinet constituted in February 2001, the 43 members appointed as Ministers of State, Ministers Delegate, Deputy Ministers and Secretaries of Government include only three women, whereas there were four in the previous Government. The situation in the House of Representatives of the People is no better, with only 5 of the 80 seats occupied by women.

92. According to information on national television, some 30 prostitutes said that they had been raped by Malabo policemen in June 2001. The prostitutes filed a complaint with the Ministry of Social Affairs and stated that the policemen kept them in detention for over one week, raped them and stole their money.

II. MONITORING OF TECHNICAL ASSISTANCE TO EQUATORIAL GUINEA IN THE FIELD OF HUMAN RIGHTS

A. Technical assistance by the European Commission

93. In late 2001, the European Commission adopted a 3 million Euro project for support in the fields of human rights, democratization and the rule of law. The project, which is scheduled to last 36 months, provides for activities in support of legal certainty (publication of the Boletín Oficial del Estado, codification of laws, harmonization of national law with international instruments), the House of Representatives of the People (organization of seminars, establishment of an information and documentation system) and civil society (formation of civil society, establishment of an information and communication network, establishment of structures for dialogue with the authorities and cooperation between civil society organizations).

94. The project's objectives include various topics recommended by the Commission on Human Rights, such as accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Representative recommends that other recommendations should also be taken into account in the implementation of specific project components. For example, verifying that the necessary measures are being taken to comply with the order that there should be no arbitrary detentions should be considered as a possibility when legal certainty support activities are carried out. The establishment and authorization of human rights organizations should also be an indicator of the results of activities provided for in the project as support for civil society.

95. A reason for uncertainty about the success of the project is the announcement that the European Commission will close its offices in Equatorial Guinea in 2002 and that it may ensure project follow-up through its office in Gabon. The Special Representative urges the European Commission to adopt the necessary provisions to deal with this contingency and, in particular, to ensure that project execution will contribute to the implementation of the recommendations of the Commission on Human Rights.

B. Technical assistance by the United Nations Development Programme

96. As stated in the preceding report, in October 2000, under an agreement with UNDP, the Government of Equatorial Guinea adopted a National Governability Programme (PNG), which is composed of four subprogrammes, one of which deals with human rights and good governability. No activity has been carried out since the signing of the Programme and the conference which had been planned to evaluate the Programme's implementation did not take place in September 2001.

C. Technical assistance by the Government of Spain

97. Spanish cooperation limits its areas of activity primarily to education, health and the cultural sector, as stated in other sections of this report. It also supports activities to promote the rights of women, such as an awareness-raising campaign which took place during the Special Representative's stay.

98. The Spanish authorities told the Special Representative that their relations with the Government of Equatorial Guinea include the objective of helping to improve its image and that one of the basic requirements is a firm invitation to respect human rights and implement the Commission's recommendations. The Special Representative appreciates this attitude, but stated and repeated his concern that there might be contradictions between the objectives of image improvement and respect for human rights if they are presented as being interdependent and invites the Spanish authorities to make a more clear cut distinction between them.

99. During his visit, various persons told the Special Representative that they were concerned about the changes made in the second half of 2001 in the programmes that Radio Exterior de España has been broadcasting for Equatorial Guinea for about 10 years. These changes are the dismissal of its director, the journalist Rafaela de la Torre, who is widely known throughout the country, the reduction in broadcast time and the changeover to a programme

intended not only for Equatorial Guinea, but also for all of Africa, although, according to its new director, there are no programmes in other languages than Spanish spoken in Africa and no plans to have any. Radio Exterior de España was the main source of information for the entire population of Equatorial Guinea and public officials, diplomats and ordinary people listened enthusiastically to its news and other programmes. Because there are so few information media in Equatorial Guinea, these changes are regarded as being serious and contrary to cooperation activities in the cultural sector.

100. The Minister of Justice told the Special Representative that, by the end of 2001, the Government intended to sign an agreement with the Madrid Bar Association because, in his words, "there are ethical problems in the practice of law that we cannot solve without its cooperation".

D. Technical assistance by the Government of France

101. The priority of French technical cooperation in the field of human rights is the training of staff working in the judicial sector. In order to achieve this objective, it plans to award 80 fellowships for courses in France. It is also supporting the establishment in 2002 of a Judicial Training Institute, which will be responsible for training judges and justice officials, and is providing funding for a French adviser in the Ministry of Justice, whose task is to advise the Minister on the reform of the Ministry and, in general, on the reform of the Equatorial Guinean judiciary, including a proposal for the establishment of the office of the Ombudsman.

102. As part of assistance activities, a French judge carried out a one-week mission in October 2001 to identify problems relating to the codification of the laws. The mission was the outcome of the decision adopted in spring 2001 to establish a National Codification Commission composed of six subcommissions on civil, criminal, economic-trade, family, customary and environmental law.

103. There are two French volunteer workers in the Bata gendarmerie whose assigned task is to support the rule of law and who are in a good position to contribute to the implementation of the Commission's recommendations, especially those relating to the rights to physical liberty, personal integrity and due process. The Special Representative shared this concern with the Ambassador of France in Equatorial Guinea, who said that he felt the same way.

III. ASSISTANCE TO THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND TO THE GOVERNMENT FOR THE ESTABLISHMENT OF A TECHNICAL ASSISTANCE PROGRAMME BY THE OFFICE OF THE HIGH COMMISSIONER

104. In his preceding reports, the Special Representative stated that "the technical assistance which (...) may [be] provide[d] to Equatorial Guinea can be productive provided that it starts from the implementation, within a reasonable period, of the recommendations made repeatedly by the Commission which do not require technical assistance (...), which could be accomplished by a simple government order to that effect, and the adoption of control mechanisms to ensure that the order is fulfilled" (E/CN.4/2001/38, para. 113).

105. On the basis of this criterion and as a result of the dialogue with the Government, the Special Representative identified, during his visit to the country, a number of immediate actions which the Government said it was prepared to take by the end of the first quarter of 2002: (a) accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (b) accession to the International Convention on the Elimination of All Forms of Racial Discrimination; (c) reminder to all relevant government bodies of the need to comply fully with international and national standards relating to detention in order to guarantee, in particular, that no one is deprived of his liberty without a court order; (d) improvement of facilities in detention centres to ensure that they all have decent and hygienic sanitation services; (e) submission to Parliament of a bill to guarantee that civilians are tried only by civilian courts; and (f) formalization of the instruction already issued by the Government that, in accordance with article 11 of the International Covenant on Civil and Political Rights, prison for civil debt, including the dowry that divorced women are forced to return, is prohibited.

106. The Government and the Special Representative agreed that, prior to the start of the Commission's fifty-eighth session in March 2002, the progress made on such actions should be assessed in order to determine their compliance and adopt the necessary measures for their implementation, if necessary.

107. In order to help build on or supplement these efforts, the Special Representative recommended in November 2001 that the Office of the United Nations High Commissioner should provide technical assistance by sending Equatorial Guinea one or more persons who are experts on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, on police and judicial investigation techniques that do not involve torture or ill-treatment and on military justice in order to help the authorities and the population of Equatorial Guinea guarantee practical respect for the rights referred to in the above-mentioned actions through courses and seminars intended for the population and the government officials concerned. The Special Representative also recommended that effect should be given to the Government's invitation for a visit to the country by the Special Rapporteur on torture and the Special Rapporteur on the independence of judges and lawyers.

108. As a result of the foregoing, the Office of the United Nations High Commissioner stated that it was prepared to implement the project in the first quarter of 2002. The evaluation of this experiment will provide valuable guidelines for the implementation of subsequent technical assistance projects based on the Government's willingness specifically to apply concrete recommendations made by the Commission.

109. For the Special Representative, these actions may be an important step towards the formulation by the Government, with the necessary participation of society and in accordance with United Nations criteria, of a national plan of action in respect of human rights based on the recommendations to Equatorial Guinea formulated by the Commission and also including the technical assistance that needs to be provided to Equatorial Guinea for their implementation.

IV. CONCLUSIONS AND RECOMMENDATIONS

110. The Commission's monitoring of the serious human rights situation in Equatorial Guinea since 1976 gave rise in 2001 to the implementation of some recommendations by the Commission which do not require technical assistance (organization of an official printing office for the publication of the laws, establishment of health services in one of the prisons where such services were lacking, eradication of the practice of persecuting persons entering the country with foreign press) and to the announcement of the Government's decision to implement other similar recommendations during the first quarter of 2002 (accession to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of All Forms of Racial Discrimination, the adoption of measures to prevent the practice of arbitrary detention, the prohibition of the trial of civilians by military courts, the improvement of health conditions in other detention centres and the elimination of the possibility that persons may be imprisoned for civil debt, especially divorced women who do not return the marriage dowry).

111. On the Special Representative's recommendation, the Office of the High Commissioner has decided to implement a technical assistance project which will help consolidate these steps through the sending of a mission of experts who will give detailed consideration during the first quarter of 2002, with the Equatorial Guinean authorities and society, to the subject matter of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, to judicial investigation techniques not involving torture and to military criminal justice. The mission's experience will provide criteria for the formulation of other technical assistance projects which will contribute to the preparation of a national plan of action on human rights based on other recommendations by the Commission.

112. These other recommendations are described in detail in the Special Representative's preceding reports (E/CN.4/2000/40, paras. 130 to 146, and E/CN.4/2001/38, paras. 114 to 122); they are not reproduced here for reasons of space, but they consist mainly in preventing and punishing arbitrary detention and torture; promoting freedom of expression and of the press; removing military blockades inside the country; guaranteeing the independence of the judiciary; codifying the laws; eliminating discrimination against women; encouraging political, cultural and racial pluralism; and satisfying basic food, decent housing, health, education and employment needs, with particular reference to the rights of girls and boys.

113. There are specific aspects of these recommendations on which the Special Representative considers it necessary to make an urgent appeal in respect of conditions of detention so that the authorities will keep orderly records of the admission and release of detained persons; refrain from torture; stop using the inhuman barracks of the Bata military gendarmerie as a centre for the detention of civilians or of any person; improve health conditions in all detention centres in general and in those of the Malabo and Bata police stations in particular; demilitarize the management of detention centres; stop imprisoning minors; prohibit detentions on the grounds of "superior orders", "insubordination" and "on behalf of" multinational corporations; not keep persons manacled in prison; refrain from using detainees as free labour for their service; stop forcing detainees to do unpaid work and, instead, encourage and remunerate voluntary work; prevent the "brainwashing" of detainees; and not allow persons detained by court order to be

released on the order of a government or military official. These are all recommendations which may be adopted directly and immediately by the Government without any need for special technical assistance.

114. Further measures are required to prevent women from being imprisoned for abandonment of the home, failure to certify unmarried status or adultery; to guarantee that criminal investigations are conducted by judicial authorities and not by military officials; to prevent popular trials from being held in Congress, without procedural guarantees; to deal with the increase in child prostitution; and to combat xenophobia against immigrants from neighbouring countries. The Special Representative urges the Government to formulate policies with a view to bringing about a prompt and satisfactory solution to these problems.

115. The Special Representative reiterates the appeal made in the past to all organizations which cooperate with Equatorial Guinea and to multinational corporations which are carrying out activities in the country to bring their programmes and activities into line with the recommendations of the Commission, through its Special Representative and the Office of the High Commissioner.

116. The Special Representative also reiterates his appeal that account should be taken of the invitation by the Equatorial Guinean opposition in exile to hold a political dialogue aimed at finding ways of guaranteeing democracy and human rights and also recommends that the Commission should express its willingness to take part, to the extent that it is lawfully able to do so, if this is considered useful by the parties.

117. The Special Representative notes with concern that some arbitrary measures adopted internationally to combat the reprehensible terrorist acts of 11 September 2001 are being used as an example and as a justification for human rights violations in Equatorial Guinea and he therefore urges the Commission and the Government to reaffirm the international obligations to respect and protect human rights and to deal decisively with the threat to their fulfilment posed by the temptation to violate human rights in order to guarantee security.

118. In view of the foregoing, the Special Representative recommends that the Commission should maintain and strengthen the decision that it has been maintaining for the past 26 years to keep a close watch on the situation of human rights in Equatorial Guinea, so that the recommendations repeatedly formulated to the country by the Commission may be implemented. To this end, what is needed is the renewal of the mandate of a special representative to monitor the human rights situation and the technical assistance given to the country and the adoption by the Commission of any additional measures that may be considered appropriate to guarantee the fulfilment of such a mandate and Equatorial Guinea's international obligations.